

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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MARCO ANTONIO ORTEGA,

Plaintiff,

-against-

21 CIVIL 10212 (LGS)

**DEFAULT JUDGMENT**

THE MATILDA GOURMET DELI INC, et al.

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated February 9, 2023, the Report is adopted in part and adopted as modified in part as follows: The award of unpaid minimum wages is reduced from \$1,680 to \$1,000; the award of unpaid overtime wages is reduced from \$38,890 to \$38,800; and the award of liquidated damages is reduced to match the sum of those amounts, from \$40,570 to \$39,800. The adjustments arise from two issues. First, the Report states that, for the first six weeks of 2018, there was a \$2.50 differential between Plaintiff's hourly rate of \$10 and the applicable minimum wage for small employers. The minimum wage for small employers in New York City, from December 31, 2017, until December 30, 2018, was \$12.00, NYLL § 652(1)(a)(ii), so the differential between Plaintiff's pay and the minimum wage was only \$2.00. Second, the Report calculated Plaintiff's unpaid minimum wages based on Plaintiff's full sixty-hour workweek. That results in double-counting, because the full underpayment of Plaintiff's wages for all hours after the first forty was included already in the calculation of Plaintiff's unpaid overtime wages, since unpaid overtime wages were calculated by multiplying 1.5 times the minimum wage rate -- not Plaintiff's actual wage rate. See *Rosendo v. Everbrighten Inc.*, No. 13 Civ. 7256, 2015 WL 1600057, at \*3-4 (S.D.N.Y. Apr. 7, 2015), report and recommendation adopted, 2015 WL

4557147 (S.D.N.Y. July 28, 2015) (calculating unpaid minimum wages using the difference between plaintiff's hourly wage and the minimum wage "[m]ultiplied by the first forty hours [plaintiff] worked each week" and then separately calculating unpaid overtime wages on hours worked beyond forty). Recalculating Plaintiff's unpaid wages after making those adjustments yields the amounts above. ORDERED that Plaintiff is awarded \$89,600, plus pre-judgment interest to be calculated by the Clerk of Court at the rate of 9% per annum from November 23, 2018, until the date judgment is entered, in the amount of \$34,023.45, and post-judgment interest, to be calculated from the date judgment is entered until the date of payment, using the federal rate set forth in 28 U.S.C. § 1961. Plaintiff is awarded attorneys' fees in the amount of \$5,897.50. Default Judgment against Defendants is entered; accordingly, the case is closed.

**Dated:** New York, New York

February 10, 2023

**RUBY J. KRAJICK**

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**Clerk of Court**

**BY:**

*K. mango*

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**Deputy Clerk**